In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 669

LEWIS J. RITACCO AND JERROLD ORLAND CONAWAY, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 5-14) is reported at 349 F. 2d 907.

JURISDICTION

The judgment of the court of appeals was filed on August 24, 1965. A petition for rehearing was denied on September 17, 1965. The petition for a writ

of certiorari was filed on October 14, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence was sufficient to show that stolen coins transported in interstate commerce were of a value of $5,000 or more.

STATEMENT

Petitioners were charged in an indictment returned in the District of Minnesota with transporting a coin collection valued at $20,000 from Minneapolis, Minnesota to Harrisburg, Pennsylvania. They were convicted after a jury trial. Petitioner Ritacco was sentenced to imprisonment for a period of four and one-half years and petitioner Conaway to imprisonment for four years. The convictions were affirmed upon appeal.

On Sunday, November 25, 1962, in Minneapolis, Minnesota, burglars broke into the home of Roger Lanns and stole part of his coin collection (Tr. 31-37). The following morning petitioner Ritacco was seen carrying 4 to 6 suitcases from his automobile to his apartment in St. Paul, Minnesota (Tr. 139-140). On December 7, 1962, petitioner Conaway, using an assumed name and a false address, tried to sell to a coin store at Harrisburg, Pennsylvania, 300 rolls of coins of the kind that had been stolen, at a price below their market value (Tr. 157-158, 169-183). Petitioners were arrested in the store at the direction of a

police officer who had read about the theft. At the time of the arrest, the police seized coins from petitioners, including coins found in Ritacco's automobile, which were appraised as having a minimum market value of $8,505 (Tr. 193-205, 220, 351). The coins, with some exceptions, were of the same kind and of equal or lesser quantity than the coins stolen from Lanns. However, Lanns was able to identify positively as coming from his collection only a 1923 Denver $20 gold piece and two rolls of 1960 Philadelphia small date pennies. Another coin roll was similar to one which he owned and the coin rolls were sealed with wax similar to that which he used (Tr. 120-126).

ARGUMENT

The statute, 18 U.S.C. 2314, proscribes as a federal crime the interstate transportation of stolen property having a value in excess of $5,000. There is no basis for petitioners' contention that the prosecution failed because Lanns was able to identify only a small portion of the coins recovered as positively having belonged to him. The circumstance that, in addition to the coins positively identified, petitioners had in their possession the same kind of coins in equal or less quantity than the coins stolen furnished sufficient evidence from which the jury could conclude that over $5,000 in stolen coins had been transported from Minneapolis to Harrisburg. Nor is there any conflict with *Karn* v. *United States*, 158 F. 2d 568 (C.A. 9), upon which petitioners rely, since in that case there was no positive identification of any of the currency stolen.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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